STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 25, 2009
v	No. 284594 Livingston Circuit Court
TIMOTHY ALLEN TAYLOR, JR., Defendant-Appellant.	LC No. 07-016934-FC

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, and was sentenced as a third habitual offender, MCL 769.11, to 20 to 50 years in prison. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the trial court abused its discretion by denying his motion for a new trial because the jury's verdict was against the great weight of the evidence. We disagree.

We review a trial court's grant or denial of a motion for a new trial for an abuse of discretion. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008).

MCL 750.529 provides in relevant part:

> A person who engages in conduct proscribed under section 530 and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony . . . .

On October 6, 2007, defendant robbed a party store[1]. In preparation, defendant cut holes into an orange knit hat to create a ski mask, smoked crack cocaine, put on a pair of gloves, and

[1] Defendant admits that he committed the robbery. He denies only that he committed an *armed* (continued…)

walked into the store. Defendant succeeded in stealing money from the cash register and fled. Defendant denied that he had a gun or that he pretended to have a gun. Four eyewitnesses testified at trial, and they all testified that they did not see any weapon. However, two of the witnesses, Ms. Allen and Mr. Blanchard, testified that defendant acted in a manner that led them to believe that he had a gun. The other two witnesses, Ms. Miller and Ms. Cannon, testified that defendant did nothing that led them to believe that he had a gun.

Allen testified that defendant grabbed her, that she could feel something hard sticking into her side, and that she "clearly" heard defendant say that he had a gun and that he was not afraid to use it. This statement led Allen to believe that the hard object that was sticking into her side was a gun. Blanchard testified that defendant had a triangular-shaped, wrapped object in his right hand. When Blanchard took a step toward defendant, defendant pointed the object at Blanchard and asked him, "Do you want a piece of this?" Blanchard testified that this action caused him to believe that the wrapped object "might have been a gun or something of that nature." Miller testified that she did not hear defendant make any threats or state that he had a gun; however, Miller testified that the entire situation was traumatic for her and that she "kind of blocked everything out after [defendant] let [her] go."[2] Cannon testified that she could not hear anything that defendant was saying. However, she acknowledged that she was inside the store only for a few seconds while defendant was holding Allen, and was not in the store at all when defendant allegedly pointed an object at Blanchard.

A motion for a new trial should be granted only when the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 639, 642; 576 NW2d 129 (1998); *Unger*, *supra* at 232. Determining whether a verdict is against the great weight of the evidence requires review of the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds in *Lemmon*, *supra*. The jury's verdict should not be set aside if there is competent evidence to support it; the trial court cannot substitute its judgment for that of the factfinder. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). If there is conflicting evidence, the question of credibility ordinarily should be left for the factfinder. *Lemmon*, *supra* at 642-643. We defer to the trial court's opportunity to hear the witnesses and its unique qualification to assess credibility. *Id.*

Two witnesses testified that defendant acted in a manner that led them to believe that he had a gun, and two other witnesses testified that defendant did nothing that led them to believe that he had a gun. There was testimony that defendant possessed an article used in a manner that led two witnesses to reasonably believe that the article was a gun, and there was testimony that defendant orally represented that he was in possession of a gun. The jury could have found that defendant was "armed" under either of these circumstances. MCL 750.529. The testimony of

(…continued)

robbery.

[2] Both Miller and Allen worked at the party store. Defendant initially grabbed Miller, and Miller yelled for Allen. When Allen came to the front of the store, defendant released his grip on Miller and grabbed Allen.

Miller and Cannon does not preponderate heavily against the verdict, and the guilty verdict does not reflect a serious miscarriage of justice.

We hold that the trial court did not abuse its discretion in denying defendant's motion for a new trial because the verdict was not against the great weight of the evidence, and because the trial court's ruling was within the range of principled outcomes. *People v Blackston*, 481 Mich 451, 460; 751 NW2d 408 (2008).

We affirm.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio